1920s. Since then, roughly half of the States have enacted dilution statutes, and Congress passed the Federal Trade Dilution Act nearly a decade ago.

As Chairman SENSENBRENNER noted, the Federal dilution statute is being amended for two main reasons: first, a 2003 Supreme Court decision involving Victoria's Secret ruled that the standard of harm in dilution cases is actual harm. Based on testimony taken at our two hearings, this is contrary to what Congress intended when it passed the dilution statute and is at odds with the concept itself of dilution. Diluting needs to be stopped at the outset. Once it occurs, the goodwill of a mark cannot be restored.

Second, the regional circuits have split as to the meaning of what constitutes a ''famous'' mark, ''distinctiveness,'' ''blurring,'' and ''tarnishment.'' This bill more clearly defines these terms. This will clarify rights and eliminate unnecessary litigation, an outcome that especially benefits smaller businesses that cannot afford to have a misunderstanding of what is permissible under the Federal dilution statute.

Finally, amendments developed by the subcommittee and the other body will more clearly protect traditional first amendment uses, such as parody and criticism. These amendments provide balance to the law by strengthening traditional fair-use defenses.

In sum, Mr. Speaker, H.R. 683 clarifies a muddied legal landscape and enables the Federal Trademark Dilution Act to operate as Congress intended.

Mr. WU. Mr. Speaker, I rise once again to oppose the Trademark Dilution Revision Act.

Trademark law was originally about consumer protection, ensuring consumers were not confused or harmed by the misuse of a famous trademark. However, with the passage of the Federal Trademark Dilution Act in 1995, the issue of trademark dilution became more an issue of property protection. The purpose of that law was to enable businesses to protect the investment that companies have made in branding their products. Consumer confusion was no longer required to establish ''dilution.'' Not surprisingly, private lawsuits in this area jumped from 2,405 in 1990 to 4,187 in 2000.

For example, Starbucks went after a local coffee shop in my district that was named after its owner, Samantha Buck Lundberg. The coffee shop bore the nickname given to her by her family and friends—Sambuck. Ringling Bros.-Barnum and Bailey Circus sued the State of Utah over Utah's advertising slogan that it had ''The Greatest Snow on Earth.'' To the circus this slogan was an obvious play on the long time identification of the circus as ''The Greatest Show on Earth.'' Microsoft sued to prevent use of the term ''Lindows'' for the Linux operating system software and website produced by Lindows, Inc., arguing that it was clearly an attempt to play on the Windows designation of its own operating system. Lindows eventually changed the name of the product and website to ''Linspire'' after losing court cases. Best Western International (the hotel/motel chain) appears to be trying to claim sole right to the word ''Best'' when it comes to using the word in names of hotels or motels. It has sued both Best Inns and Best Value Inns, contending that those names infringe on its trademark.

In recent years, the Supreme Court addressed these lawsuits in Moseley, et al., DBA Victor's Little Secret v. V Secret Catalogue, Inc., et al., in which Victoria's Secret sued a small business in Kentucky. In its opinion, the Court ruled that companies under the Federal Trademark Dilution Act have to prove that their famous brand is actually being damaged before they can use dilution law to force another person or company to stop using a word, logo, or color.

Since trademark laws have an effect not only on famous companies but also on the many small businesses witH legitimate business interests, any antidilution legislation should be very carefully considered so as not to interfere with the rights of small businesses. The goal must be to protect trademarks from subsequent uses that blur, dilute or tarnish that trademark, but it must also be the protection of small business interests from its more powerful corporate counterparts.

Unfortunately, this bill will change trademark law to make it easier for large companies to sue individuals and businesses for trademark dilution, thus potentially creating rights in perpetuity for trademarks. This bill states that no actual harm will have to be proven; large companies will be able arbitrarily to file lawsuits against small businesses and private citizens.

I agree with the Supreme Court in its unanimous decision in Moseley. I think that companies in seeking to impose their trademarks upon the public must show actual harm. If not, we run the risk of trademark owners being able to lock up large portions of our shared language. This open-ended invitation to litigate is especially troubling at a time when even colors and common words can be granted trademark protection.

I urge my colleagues to oppose this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 683.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4772

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Rights Implementation Act of 2006''.

SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CONCERNING REAL PROPERTY.

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

''(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court if the party seeking redress does not allege a violation of a State law, right, or privilege, and no parallel proceeding is pending in State court, at the time the action is filed in the district court, that arises out of the same operative facts as the district court proceeding.

''(d) In an action in which the operative facts concern the uses of real property, the district court shall exercise jurisdiction under subsection (a) even if the party seeking redress does not pursue judicial remedies provided by a State or territory of the United States.

''(e) If the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question so certified, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

''(1) is necessary to resolve the merits of the Federal claim of the injured party; and

''(2) is patently unclear.

''(f)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, which causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, which causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable law of the United States provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

''(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS.

Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by adding at the end the following: ''If the party injured seeks to redress the deprivation of a property right or privilege under this section that is secured by the Constitution by asserting a claim that concerns—

''(1) an approval to develop real property that is subject to conditions or exactions, then the person acting under color of State law is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(2) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, territory, or the District of Columbia; or

''(3) alleged deprivation of substantive due process, then the action of the person acting under color of State law shall be judged as to whether it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

For purposes of the preceding sentence, 'State law' includes any law of the District of Columbia or of any territory of the United States.''.

SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS AGAINST THE UNITED STATES.

(a) DISTRICT COURT JURISDICTION.—Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(i) If a claim brought under subsection (a) is founded upon a property right or privilege secured by the Constitution that concerns—

''(1) an approval from an executive agency to permit or authorize uses of real property that is subject to conditions or exactions, then the United States is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(2) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim against an executive agency shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State or territory, or the District of Columbia, as the case may be; or

''(3) an alleged deprivation of substantive due process, then the United States shall be judged as to whether its action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In this subsection, the term 'executive agency' has the meaning given that term in section 105 of title 5.''.

(b) COURT OF FEDERAL CLAIMS JURISDICTION.—Section 1491 of title 28, United States Code, is amended by adding at the end the following:

''(4) If a claim brought under subsection (a) is founded upon a property right or privilege secured by the Constitution that concerns—

''(A) an approval from an executive agency to permit or authorize uses of real property that is subject to conditions or exactions, then the United States is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(B) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim against an executive agency shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, or territory, or the District of Columbia, as the case may be; or

''(C) an alleged deprivation of substantive due process, then the United States shall be judged as to whether its action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In this paragraph, the term 'executive agency' has the meaning given that term in section 105 of title 5.''.

SEC. 7. DUTY OF NOTICE TO OWNERS.

(a) IN GENERAL.—Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments by this Act, the agency shall, not later than 30 days after the agency takes that action, give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due them under such amendments.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) the term ''Federal agency'' means ''agency'', as that term is defined in section 552(f) of title 5, United States Code; and

(2) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code.

SEC. 8. SEVERABILITY AND EFFECTIVE DATE.

(a) SEVERABILITY.—If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to actions commenced on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 4772, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4772, the Private Property Rights Implementation Act, to help all Americans defend their property rights.

We are all painfully aware of one Supreme Court decision that threatens to deny Americans their constitutionally protected property rights. I refer to the notorious case of Kelo vs. The City of New London, in which the Supreme Court held that a city can take private property from one citizen and give it to a large corporation for ''economic development'' purposes. I led the charge to correct that terrible decision by introducing H.R. 4128, which passed the House of Representatives by the overwhelming bipartisan margin of 376–38. However, that bill now languishes in the other body despite overwhelming popular support.

Unfortunately, the Supreme Court's recent disregard for constitutionally protected private property is not confined to the Kelo decision. In the case of Williamson County v. Hamilton Bank, which was reaffirmed last term in the case of San Remo Hotel v. City and County of San Francisco, the Supreme Court upheld a set of procedural rules that effectively prohibit property owners from ever getting into Federal court to have their Federal property rights claims heard on the merits. I applaud the gentleman from Ohio (Mr. CHABOT) for authoring this vital legislation which will allow property owners to finally have their Federal property rights protected by the Federal courts.

This bipartisan legislation was reported out of the House Judiciary Committee by a voice vote on July 12, and I hope that this bill will receive similar bipartisan support on the floor today.

I urge my colleagues to defend the private property rights of all Americans by supporting this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in disagreement with this bill, the Private Property Rights Implementation Act, just as I have done in the 105th and 106th Congresses. I also call to the attention of the Members of the House that this bill is different from the Kelo Supreme Court decision that dealt with eminent domain, another, to me, unhappy decision which I was not overjoyed about.

But this bill does little more than single out developers and corporations for a special fast track into the Federal court.

In November of last year, I was proud to join with my colleagues on both sides of the aisle to protect property owners from takings in the name of ''economic development.'' Such takings did not constitute public uses and were found to be totally inconsistent with the fifth amendment to our Constitution. But today my friends on the other side of the aisle are arguing that the bill we are taking up today, 4772, is another effort to protect property owners. They say the bill simply makes it easier for property owners to have their day in court, in Federal court, that is.

H.R. 4772 will permit land developers to forum shop between State and Federal courts when they pursue regulatory takings claims against the government. And, unfortunately, instead of advancing our constitutional principles, this bill undermines longstanding interpretations of the fifth amendment. The Supreme Court has ruled on two different occasions, in Williamson County and in San Remo, that landowners must pursue remedies for just compensation from the State in a State court. This bill goes directly against that concept.

The Court has confirmed that a Federal court cannot properly consider a takings claim unless or until a landowner has been denied an adequate remedy. To do otherwise would make cases unconstitutionally ripe for Federal review and also limit a Federal court's ability to abstain from State questions.

Unfortunately, that is exactly what H.R. 4772 will do. It will allow regulatory takings claims into Federal courts prematurely. With the threat of Federal litigation, States and localities will be restricted in their land use decisions. For example, it will be harder for jurisdictions to protect against groundwater contamination or waste dumps or adult bookstores. This is a serious proposition, and once again I think the committee is moving in the wrong direction to bring it to the floor at this time.

Most disturbingly, this bill elevates the rights of property owners over all other categories of persons with constitutional claims. Are the rights of real estate developers more important than the rights of other Americans?

It is simply not true that there is anything special or unique about real property takings that warrants special protections for developers. This is unfortunate legislation which undermines equal justice under law, which, to me, is the very cornerstone of our legal system.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 7 minutes to the author of the bill, the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding.

And I would just point out, before I get out to my main statement, I think to the contrary, rather than elevating private property rights above other constitutional rights, it basically puts them on the same level, the same playing field, right to free speech, right to religion. In the fifth amendment it says a person's property cannot be taken away without due process of law, and all we are doing is putting people's rights relative to property under the same constitutional rights as all the others, which they have not had up to this point.

I introduced H.R. 4772, the Private Property Rights Implementation Act, earlier this year to help Americans defend their constitutionally protected rights. And I want to thank the gentleman from Tennessee (Mr. GORDON) for his leadership in this area and for being the principal Democratic cosponsor. We thank him very much for that.

Most Americans are familiar with one recent decision involving all Americans' property rights, which Chairman SENSENBRENNER referred to earlier, the case of Kelo v. The City of New London, in which the Supreme Court held that the Constitution allows government to take private property from one citizen and give it to businesses. The House of Representatives acted to correct that decision by passing H.R. 4128, under the leadership of Chairman SENSENBRENNER, by a very wide margin, 376–38.

However, the Supreme Court, during its last term, handed down another bad decision that fails to protect the private property rights of all Americans, and correcting that decision through this legislation we will be addressing today should have the same bipartisan support.

Here is the problem: strange as it sounds, under current law property owners are now blocked from raising a Federal fifth amendment takings claim in Federal court. Here is why:

The Supreme Court's 1985 decision in which Williamson County v. Hamilton Bank requires property owners to pursue to the end all available remedies for just compensation in State court before the property owner can file suit in Federal court under the fifth amendment. Then just last year, in the case of San Remo Hotel v. City and County of San Francisco, also referred to by Chairman SENSENBRENNER, the Supreme Court held that once a property owner tries their case in State court, the property owner is prohibited from having their constitutional claim heard in Federal court even though the property owner never wanted to be in the State court with their Federal claim in the first place.

The combination of these two rules means that those with Federal property rights claims are effectively shut out of Federal court on their Federal takings claims, setting them unfairly apart from those asserting any other Federal rights such as those asserting free speech or religious freedom rights, as I mentioned before.

The late Chief Justice Rehnquist commented directly on this unfairness, observing in his concurring opinion in San Remo that ''the Williamson County decision all but guarantees that claimants will be unable to utilize the Federal courts to enforce the fifth amendment's just compensation guarantee.'' The Second Circuit Court of Appeals has also noted that ''it is both ironic and unfair if the very procedure that the Supreme Court required property owners to follow before bringing a fifth amendment takings claim, a State court takings action, also precluded them from ever bringing a fifth amendment takings claim'' in Federal court.

H.R. 4772, the Private Property Rights Implementation Act, this act, which I introduced along with, again, Congressman GORDON, will correct the unfair legal bind that catches all property owners in what amounts to a catch-22. This bill, which is based on Congress's clear authority to define the jurisdiction of the Federal courts and the appellate jurisdiction of the U.S. Supreme Court, would allow property owners raising Federal takings claims to have their cases decided in Federal court without first pursuing a wasteful and unnecessary litigation detour, and possible dead end, in State court.

H.R. 4772 would also remove another artificial barrier blocking property owners' access to Federal court. The Supreme Court's Williamson County decision also requires that before a case can be brought for review in Federal court, property owners must first obtain a final decision from the State government on what is an acceptable use of their land. This has created an incentive for regulatory agencies to avoid making a final decision at all by stringing out the process and thereby forever denying a property owner access to court. Studies of takings cases in the 1990s indicate that it took property owners nearly a decade of litigation, which most property owners cannot afford, before takings claims were ready to be heard on the merits in any court.

To prevent that unjust result, H.R. 4772 would clarify when a final decision has been achieved and when the case is

ready for Federal court review. Under this bill if a land use application is reviewed by the relevant agency and rejected, a waiver is requested and denied, and an administrative appeal is also rejected, then a property owner can bring their Federal constitutional claim in a Federal court.

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The bill would not change the way agencies resolve disputes. Rather, H.R. 4772 simply makes clear the steps the property owner must take to make their case ready for court review.

H.R. 4772 also clarifies the rights of property owners raising certain types of constitutional claims in the following ways:

First, it would clarify that conditions that are imposed upon a property owner before they can receive a development permit must be proportional to the impact that development might have on the surrounding community.

Second, it would clarify that if property units are individually taxed under State law, then the adverse economic impact of a regulation has on a piece of property should be measured by determining how much value the regulating is taking away from the individual lot affected, not the development as a whole.

And, third, the bill would clarify that due process violations involving property rights should be found when the Government has been found to have acted in an arbitrary and capricious manner.

This legislation also applies the same clarifications to cases in which the Federal Government is taking the private property. And I would just note that some of the groups that strongly support this legislation are the home builders, the Realtors, the Chamber of Commerce, the National Federation of Independent Business and the U.S. Farm Bureau.

I would urge my colleagues to join in supporting this bipartisan legislation. I want to again thank Mr. GORDON for his leadership.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the ranking member of the Subcommittee on the Constitution, the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I think we all agree that the Constitution's protection of property rights must be preserved.

Let us be clear. This bill has nothing do with the Kelo decision, though they keep mentioning that. It has nothing to do with eminent domain procedures. Separate issue.

The Constitution provides for just compensation when Government takes property for a public purpose; and when it does it up front, that is eminent domain. On that much there is general agreement.

This bill is something different, something radically and dangerously different. It goes far outside the bounds of the Constitution to reward big developers and polluters whenever local government tries to preserve the quality of life in our communities by controlling the spread of huge landfills or sprawling subdivisions or factory farms or adult bookstores. It does it primarily by making a number of changes to the substance of law. I will not even talk about, I will allude to it, but I am not going to talk in detail about the forum shopping that this brings into Federal court.

By the substantive changes in the law, the bill attempts to accomplish a partial legislative override of the so-called property as a whole rule in takings litigation.

The bill states that taking claims shall be decided with reference to each subdivided lot regardless of ownership, ''if such lot is taxed or is otherwise treated and recognized as an individual property unit by State, territory or the District of Columbia.''

Regulations, local zoning regulations, wetlands regulations, commonly restrictive elements of some proportion of a property, while allowing development of other portions.

Under the well-established property as a whole rule, courts evaluating tax's claims, that is, evaluating a claim that some regulation is in fact a taking of private property without due process of law and therefore unconstitutional, must consider the impact of the regulation on the owner's entire property.

Courts routinely apply this rule in situations where the property has been subdivided to separate tax lots or otherwise legally subdivided on the grounds that this type of property subdivision is irrelevant to the taking's analysis.

This bill would override this established application of the property as a whole rule. For example, if a developer owned property subdivided into 100 lots, two of which were classified as wetlands, the bill would force taxpayers to pay the developer to prevent the development of those two lots, notwithstanding that he is able to build on 98 percent of the land.

The Constitution and our historic traditions have never guaranteed the ability to build on every square inch of property. This modification of the property as a whole rule would represent a substantial change in takings doctrine and would force taxpayers to pay someone for any reduction in the inability to use any inch of property under any zoning regulation.

So if you own a single family home in a suburb and you do not want to see every inch built right up to your lot line, have your Congressman vote for this bill, if you do want to see that, rather.

If you want to protect the ability of your town council to say we want zoning on half-acre lots, then you cannot support this bill. Because any town council that said you have to have at least a half acre or quarter acre or whatever is saying you cannot build on every inch and the public must pay for that.

The public will never pay for that. It is much too expensive, which means you cannot have any zoning regulations, you cannot have any limitation on density, and you cannot have any environmental regulations to prevent building on wetlands or other environmentally sensitive areas. That is what this bill does.

The bill also provides that in a case alleging a deprivation of substantive due process, the Government actions ''shall be judges to whether it is arbitrary, capricious and abuse of discretion or otherwise not in accordance with law.''

Prior to the New Deal, prior to 1937, in the so-called Lochner era, the due process clause provided the constitutional basis for a very activist Supreme Court decision striking down a wide variety of regulations: Minimum wage laws are unconstitutional, maximum hour laws are unconstitutional, factory safety laws are unconstitutional. Why? Because it was a violation of substantive due process.

This bill language seeks to revive this Lochner doctrine by promoting the revival of an expansive reading of the due process clause. Since the 1930s, the courts have applied the due process clause with considerable deference toward the elected branch of the government. Republicans talk all the time about activist courts, we do not want them, they say deference to the elected branch of the government, except here.

Reflecting this approach, Justice Samuel Alito, while sitting as a Judge of the Court of Appeals for the 3rd Circuit, rejected a due process challenge to a municipal ordinance on the basis that the Government action violates substantive due process only when it ''shocks the conscience.''

This bill would replace this relatively deferential, widely accepted standard with a wider standard focusing on whether the Government acted arbitrarily, capriciously or with an abuse of discretion.

In addition, the bill states the Government action should be judged based on whether it is otherwise not in accordance with law. This language would convert every single legal dispute over the application of garden variety zoning regulations, garden variety maximum hour, minimum wage, factory safety, environmental, whatever laws into a constitutional due process issue.

This bill goes so far to destroy the ability of communities to control the spread of huge landfills or of sprawling subdivisions or factory farms or adult bookstores. You want an adult bookstore on every block, and the town council cannot stop it, vote for this bill.

A developer can circumvent local government and normal State court consideration, drag our local governments into Federal Court and demand payment every time our constituents want to preserve their health or quality of life.

The threat of Federal court litigation is real and troubling. One representative of the National Association of Homebuilders said this bill would be a hammer to the head of every local official. Is that what we should be doing? Congress and the Federal Courts will now become a super national zoning board?

Whatever danger to the environment this legislation may pose, it is green in at least one respect. It is an outstanding example of recycling, taking us all back to those memorable days of Newt Gingrich's Contract on America, where even the Republican Congress rejected this kind of legislation in those days.

Later versions of that effort, which have been called kinder and gentler by at least one legal scholar, focused on procedural issues, a euphemism for the kind of forum shopping in this bill.

This bill is much less kind and less gentle. It greatly expands the definition of a taking. It would require the Government to provide compensation in the kinds of cases I spoke of a few minutes ago where the Constitution does not require compensation. It would allow developers to game the system by dividing their lots to squeeze money out of our communities.

Should we have to pay someone off to keep them from poisoning our drinking water? Should we have to pay people off if we want to control suburban sprawl? Is it a taking if we make them pay for some or all of the costs of the new roads, sewer lines, water lines and schools that will be needed when they are done? This bill says ''yes''.

Should local taxpayers have to pay a developer whenever any conditions are imposed on a developer before allowing them to move forward? This bill says ''yes''.

My Republican colleagues on the Judiciary Committee often rail against ''trail lawyers'' who engage in forum shopping. Now this bill, proposed by those same Members, would write forum shopping into the law to benefit one large group against everybody else: large real estate developers against every member of local government and every local constituent who cares about their community.

Let us have no doubt that this is a big developers' bill.

One of the majority's witnesses at the hearing we had on this bill last year was Frank Kottschade, a major local developer. Another was an attorney who made an impassioned plea for small property owners. But it turned out that the bio from his firm's Web site said that he represented such small property owners as Wal-Mart, the Rumpke landfill in a major expansion effort, Home Depot and General Electric. That is who this bill is for.

And let me clear up some confusion. Many Members of this House were outraged by the Supreme Court's Kelo decision, which dealt with the use of eminent domain to promote economic development. This bill, I will repeat, has nothing to do with Kelo, nothing to do with eminent domain. This bill has to do with destroying the ability of our local communities to enforce the zoning regulations, environmental protection, environmental regulation and any kind of limitation on any kind of development.

If that is what you want to do, if you want the Federal Government to come in and be the master of zoning and overrule all local regulations so that local government may as well go out of business, because Congress knows best, and in fact not even Congress, the courts know best, then vote for this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. GORDON), showing that this bill is truly bipartisan.

Mr. GORDON. Mr. Speaker, this legislation fixes an unfairness that too often deprives small and middle class property owners of their rights.

The Constitution prohibits the Government from taking private property without giving due compensation to the owner. Unfortunately, this right is being lost because the property owners are being denied their day in Federal Court. Instead, the Supreme Court forces them to pursue their compensation claims in State courts. It then slams the Federal courthouse door shut to their fifth amendment claims.

This one-two punch adds to the expense of litigating takings cases and thereby prevents small and middle class property owners from asserting their right to use or be fairly compensated for their property. This bill allows them to raise a Federal takings claim without first being detoured through the State courts.

This change made by the bill is fair, and I urge the House to pass H.R. 4772.

Mr. CONYERS. Mr. Speaker, how much time remains on this side?

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) has 7 minutes remaining, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 10 minutes remaining.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me time.

In response to some of the issues raised by the gentleman, my good friend from New York (Mr. NADLER), I would just note a couple of things.

There is nothing in this bill that would prohibit municipalities from taking land to protect health and safety or any government from protecting the environment. However, if the land is so regulated as to deny the owner any use of it, then, yes, the owner needs to be paid just compensation. That is what this bill does.

The fifth amendment does not have an exception for environmental laws, for example. In fact, the best approach would be to purchase the land through eminent domain, for example, rather than trying to pull a fast one and harm the property owner. The basic idea is that the individual property owners should not bear all of the costs of protecting our communities.

A few landowners should not have to sacrifice their own land and economic well-being for the betterment of a town or a city. Rather, the town should give them their just compensation.

To quote the California Supreme Court in Ehrlich, 1977, ''the United States Constitution, through the takings clause of the fifth amendment, protects us all from being arbitrarily singled out and subjected to bearing a disproportionate share of the costs.''

Communities can enact all of the necessary zoning and land use requirements to protect the public welfare, but they cannot exact or enact unconstitutional regulations.

Environmental groups wrote in their opposition letter to H.R. 4772 that, ''developers could use this hammer'', and I think the gentleman mentioned this, ''developers could use this hammer to side-step land use negotiations and avoid compliance with local laws that protect neighboring property owners and the community at large.''

This is simply not true. Reasonable protections will not violate the Constitution. But what these groups are really saying is that environmental regulations should be immune from court review.

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The fifth amendment should apply in all takings cases, and we should not be carving out exceptions when it comes to public health and safety.

Just like in the Kelo legislation we passed, we did not carve out exceptions for the private use of eminent domain because some property is not as desirable to the community at large. All property should be treated the same; and if there is a public health or environmental need to take the land, owners should be compensated for its taking.

The point is that there are limits to what the government can do, even for public health and safety, and that limit is called the Bill of Rights.

This is what we are doing. We are essentially giving private property owners the same rights as other people would have in court if they brought a first amendment claim for free speech or freedom of religion or on whatever else. They are all on the same par and people should be treated fairly.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. NADLER), the ranking member of the Subcommittee on the Constitution.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, first of all, we are told that this is a terrible situation because under current law, given Supreme Court decisions, you have to go to State court; you cannot adjudicate your Federal constitutional rights in Federal court. You can always appeal

any final court State decision. If you claim that the Supreme Court of Tennessee has violated your Federal constitutional rights, you can always appeal that into the Federal courts. So no one is disputing that. So that is a bogus claim.

Secondly, of course, the bill does not say directly that the local government must pay anybody who is denied any opportunity to do anything; but it has that effect because, for example, the law does not carve out an exception from the fifth amendment. The fifth amendment applies to everything, but the courts have long held that if you have a 100-acre plot of land and 2 acres, let us say, are wetlands that you cannot develop and you can develop 98 of 100 acres, if you look at the property as a whole and there is no taking there.

What this bill says is if they say 2 acres are wetlands and you cannot build on it or after half an acre or 35 square feet, the local government must pay for that; and for that matter if the local government says that you can only build on half acre lots, you cannot fill up every inch, then you are not using every inch of your land, you are prevented, and that is a taking of property.

Basic law always has been understood that as long as you can substantially use your land, not every inch of it, not to the extent, that is not a taking.

This says it is a taking. So if New York City zoning says the you can only build 75 stories, you cannot build 300 stories, under this bill, the local government would have to pay for the value of the 225 stories that you cannot build. This is way beyond takings law, and that destroys all local regulations. That is why this bill should be defeated.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. BLUMENAUER) who has studied this issue very carefully.

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy for permitting me to speak on this bill.

In a prior life, I spent 10 years administering programs like this with the city of Portland. Our community is like many around the country that have, as the gentleman from New York referenced, sophisticated planning and zoning regulations. These are elements that are developed as a result of local community pressure to balance interests.

I find no small amount of irony that some of these friends of ours who think that the courts are not capable of ruling on marriage want to strip away the powers of the Federal court to deal with issues of the Pledge of Allegiance, who all of the sudden want to overrule over a century of development that deals with planning and zoning in this country.

There are appeals that take place each and every day from coast to coast in almost every State of the Union where people have some differences of opinion. There are elaborate mechanisms that deal with local appeals, where there is negotiation that takes place between the development community, the local officials, planning and zoning boards that end up giving something that makes sense for the community, makes sense for the developer, makes sense for the protection of the environment and health and development standards.

Under this legislation, one time if a developer does not get what he or she wants on any meaningful application, whatever that might mean, they can be thrown into the Federal judiciary. I would suggest that there is a reason why the American Planning Association, Defenders of Wildlife, the National Trust for Historic Preservation, Natural Resource Defense Council, the League of Cities, the people who are dealing with how to make communities more livable and to make them work, are opposed to this legislation.

This has, as has been pointed out, nothing to do with Kelo. These are areas where reasonable exercise of the planning mechanisms over 33 States have developed from coast to coast trying to look at the big picture and trying to balance it.

This is a stealth attack on what communities are trying to do to equip people to be able to deal with the consequences of growth and development pressures and what we learn on an ongoing basis about the impacts environmentally and in terms of better ways of being able to accomplish objectives in the development community.

I would respectfully suggest that it is far better to allow this process to work rather than trying to drag the Federal courts into it unnecessarily.

Mr. CONYERS. Mr. Speaker, I yield myself the remainder of the time.

There has been one other mischaracterization made that should be corrected here, because it has been said on the other side more than once that the plaintiff in these kinds of cases is required to stay in the State courts and that we are now moving him up in line with others, but there are many circumstances that require the exhaustion of a State court remedy before you can come into the Federal court.

For example, the termination of parental rights requires an exhaustion of State rights. The detention and violation of the sixth amendment right to counsel requires an exhaustion of the State rights before you move into the Federal court. Confinement for juvenile offenders in violation of the eighth amendment requires the same thing, so does denial of Medicaid benefits in violation of first amendment religious protections.

What we see here is the most incredible use of determining who goes into Federal court and who can go in quickly and easily, and we do not think that developers have done anything to justify that.

So in the name of all the local lawmakers, in the name of those who have any respect for the rights of States in these matters, who respect the traditions that have been well-established in the law for determining how we deal with these claims, we urge a ''no'' vote on H.R. 4772.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I appreciate this opportunity to explain my concerns with the bill, H.R. 4772, the Private Property Rights Implementation Act of 2005. I oppose the bill because I am concerned that it will weaken local land use, zoning, and environmental laws by encouraging costly and unwarranted ''takings'' litigation in federal court against local officials.

Mr. Speaker, H.R. 4772 would fundamentally alter the procedures governing regulatory takings litigation. Those procedures are required by the U.S. Constitution and have been repeatedly reaffirmed by the U.S. Supreme Court, as recently as last year. The bill purports to alter these requirements by giving developers, corporate hog farms, adult bookstores, and other takings claimants the ability to bypass local land use procedures and state courts. Indeed, the National Association of Home Builders candidly referred to a prior version of the bill as a ''hammer to the head'' of local officials. Developers could use this hammer to side-step land use negotiations and avoid compliance with local laws that protect neighboring property owners and the community at large.

In addition, section 5 of the bill purports to dramatically change substantive takings law as articulated by the Supreme Court and other federal courts by redefining the constitutional rules that apply to permit conditions, subdivisions, and claims under the Due Process Clause. The existing rules, developed over many decades, allow courts to strike a fair balance between takings claimants, neighboring property owners, and the public. The proposed rules would tilt the playing field further in favor of corporate developers and other takings claimants, even in the many localities across the country where developers already have an advantage.

As a result, H.R. 4772 would allow big developers and other takings claimants to use the threat of premature federal court litigation as a club to coerce small communities to approve projects that would harm the public. By short-circuiting local land use procedures, H.R. 4772 also would curtail democratic participation in local land use decisions by the very people who could be harmed by those decisions.

The bill also raises serious constitutional issues. The provisions that purport to redefine constitutional violations ignore the fundamental principle established in Marbury v. Madison (1803) that it is ''emphatically the province and duty'' of the federal courts to interpret the meaning of the Constitution. Moreover, under longstanding precedent, a landowner has no claim against a state or local government under the Fifth Amendment until the claimant first seeks and is denied compensation in state court. Federal courts would continue to dismiss these claims, as well as claims that lack an adequate record where claimants use the bill to side-step local land use procedures. The bill will create more delay and confusion by offering the false hope of an immediate federal forum for those who have not suffered a federal constitutional injury. In short, this bill is a great threat to federalism, our local land

use protections, neighboring property owners, and the environment. Therefore, I urge my colleagues to vote against the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4772, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. CONYERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

PROUD TO BE AN AMERICAN CITIZEN ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5323) to require the Secretary of Homeland Security to provide for ceremonies on or near Independence Day for administering oaths of allegiance to legal immigrants whose applications for naturalization have been approved, as amended.

The Clerk read as follows:

H.R. 5323

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Proud to Be an American Citizen Act''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The United States is a nation of immigrants.

(2) Immigrants strengthen the economic and political ties of the United States with other nations.

(3) Immigrants enhance the Nation's ability to compete in the global market.

(4) Immigrants contribute to the Nation's scientific, literary, artistic, and other cultural resources.

(5) A properly regulated system of legal immigration is in the Nation's interest.

(6) The Naturalization Oath of Allegiance impresses on new United States citizens—

(A) the shared American values of liberty, democracy, and equal opportunity; and

(B) the obligation to respect and abide by the Constitution, including the Bill of Rights.

(8) Naturalization rewards legal immigrants who have abided by all Federal laws and Department of Homeland Security regulations.

(9) Naturalization bestows all the legal rights, privileges, and responsibilities of a United States citizen.

SEC. 3. INDEPENDENCE DAY CEREMONIES FOR OATHS OF ALLEGIANCE.

(a) IN GENERAL.—The Secretary of Homeland Security shall make available funds each fiscal year to the Director of U.S. Citizenship and Immigration Services or to public or private nonprofit entities to support public ceremonies for administering oaths of allegiance under section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) to legal immigrants whose applications for naturalization have been approved.

(b) CEREMONIES.—A ceremony conducted with funds under this section—

(1) shall be held on a date that is on or near Independence Day; and

(2) shall include appropriate outreach, ceremonial, and celebratory activities.

(c) SELECTION OF SITES.—

(1) IN GENERAL.—The Secretary of Homeland Security shall select the site for each ceremony conducted with funds under this section.

(2) SELECTION PROCESS.—In selecting a site under paragraph (1), the Secretary of Homeland Security should consider—

(A) the number of naturalization applicants living in proximity to the site; and

(B) the degree of participation in and support for the ceremony by the local community at the site.

(d) AMOUNTS AVAILABLE; USE OF FUNDS.—

(1) AMOUNTS AVAILABLE.—Amounts made available under this section for each ceremony shall not exceed $5,000.

(2) FUNDS.—Funds made available under this section may be used only for the following:

(A) Costs of personnel of U.S. Citizenship and Immigration Services and the Federal judiciary (including travel and overtime expenses).

(B) Site rental, including audio equipment rental.

(C) Logistical requirements, including sanitation.

(D) Costs for printing brochures about the naturalization participants and the naturalization process.

(3) AVAILABILITY OF FUNDS.—Funds that are otherwise available to the Department of Homeland Security to carry out naturalization activities shall be available to carry out this section.

(e) APPLICATION.—No amount may be made available under this section to an entity that is not part of the Department of Homeland Security, for supporting a ceremony described in subsection (b), unless—

(1) the entity submits an application to the Secretary of Homeland Security, in a form and manner specified by the Secretary of Homeland Security; and

(2) the Secretary of Homeland Security approves the application.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5323, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5323, the Proud to Be an American Citizen Act, which enables U.S. Citizenship and Immigration Services or nonprofit entities to conduct naturalization ceremonies on or near Independence Day each year. The legislation gives us an opportunity to underscore the importance and privilege of U.S. citizenship.

This legislation does not authorize new funds, but would provide up to $5,000 for each ceremony organized on Independence Day out of the funds already available to the Department of Homeland Security. The moneys provided under this bill would be sufficient to cover the basics for a ceremony to honor those who have worked hard and met the legal requirements to become United States citizens.

The funds may be used only for the cost of government personnel needed to administer the Oath of Allegiance, facilities rental, brochures, and other logistics. The bill requires any nongovernment entity seeking to organize a naturalization ceremony to receive approval through the Department of Homeland Security.

The bill allows new Americans to celebrate their naturalization in conjunction with celebrating America on Independence Day. I believe it is important that we support those who want to take the final step toward becoming Americans and those who have legally moved through the immigration system to obtain citizenship.

I urge Members to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

I am happy to rise in support of this legislation because immigration is one of the basic foundations of the Nation, and the contributions of immigrants are too many to be counted.

This legislation recognizes these principles, and in addition, authorizes the Homeland Security Secretary to dispense $5,000 to public and private nonprofit entities to host naturalization ceremonies. This purpose originally was authorized as a part of the 1996 immigration law, and I believe it deserves reauthorization.

I join with the chairman of the committee in urging our colleagues to vote ''yes'' on the bill

Mr. FARR. Mr. Speaker, as the original sponsor of H.R. 5323, I commend the House far adopting the Proud to Be An American Citizen Act.

I want to thank Chairman SENSENBRENNER and Ranking Member CONYERS of the Judiciary Committee for their support of this bill, as well as Mr. HOBSON of Ohio for his original cosponsorship.

H.R. 5323 provides authorization for Citizenship and Immigration Services (CIS) to support community citizenship ceremonies. A similar provision was enacted into law in the 1996 immigration reform bill, but has since expired.

CIS reports that more than 28,000 new citizens will be sworn in at 133 citizenship ceremonies around the country. These ceremonies are marked by Democrats and Republicans alike. Not only have many of us participated in these ceremonies, but throughout the years, so have President Bush, Madeline Albright, Ronald Reagan, and Arnold Schwarzenegger.